
IN THE
COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

SYLVESTER MAHONE
Appellant.

APPELLANT’S REPLY BRIEF

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ARGUMENT

Point I: Mr. Mahone Preserved His Right to Object to the Speedy Trial Violation in this Case

Mr. Mahone preserved his right to complain about the violation of his speedy trial rights by objecting to the August 3rd continuance in open court in a manner that allowed the trial court to understand the basis for his objection. Consequently, the State's argument that he waived this issue by either failing timely to object or failing specifically to object is meritless. See *Brief of Respondent* (State's Br.) at 4-10.

First, Mr. Mahone timely objected to the continuance the day the court granted the continuance. CrR 3.3(d)(3) requires a defendant timely to object to a trial date set outside the CrR 3.3 time limits. This requirement allows timely correction of any speedy trial errors. See State v. Greenwood, 120 Wn.2d 585, 606, 845 P.2d 971 (1993) (noting "purpose of an objection pursuant to [provision of rule regarding timeliness of arraignment] is to inform the trial court of an alleged error in order to permit timely correction of that error."). Under CrR 3.3(d)(3), when

notice of a nonconforming trial date is "mailed or otherwise given," the defendant must, within 10 days, "move that the court set a trial within those time limits." CrR 3.3(d)(3).

In this case, the court did not set a nonconforming trial date without notice, triggering the requirement that Mr. Mahone file a corrective motion. Instead, it held a hearing pursuant to CrR 3.3(f)(2) to consider the State's motion for a continuance. See 8/3/2010 VRP. Thus, Mr. Mahone satisfied CrR 3.3(d)(3) when he objected to the continuance in open court, stating: "Well, I'm not going to sign this because I'm objecting to continuing the trial date. I have a right." 8/3/2010 VRP 4. Cf. State v. Bobenhouse, 143 Wn. App. 315, 177 P.3d 209 (2008), *aff'd*, 166 Wn.2d 881, 214 P.3d 907 (2009) (failure to object to trial date prior to trial waived issue). Accordingly, the State's argument that no timely objection was lodged is baseless.

Next, the State's claim that Mr. Mahone's objection lacked specificity is equally without merit.

The defendant's objection to a speedy trial error must be "specific enough to alert the court to the type of error involved." Greenwood, 120 Wn.2d 585, 605, *citing, State v. Bernhard*, 45 Wn. App. 590, 600, 726 P.2d 991 (1986). As an initial matter, the context of the hearing clearly established the type of error involved in this case. Here, the State requested a continuance of the trial date and submitted a proposed order continuing trial pursuant to CrR 3.3(f). CP 63. Given this context, the court, the State and Mr. Mahone were all clear on what specific rights were at stake, making any claim of ambiguity in Mr. Mahone's objection specious.

In addition, the record establishes the trial court fully understood the nature of Mr. Mahone's objection such that it could have corrected the speedy trial error had it chosen. When the court signed the continuance order over Mr. Mahone's objection, he began trying to explain his objection: "My thing is, I'm objecting to the waiver of my speedy trial dates. I have a Sixth Amendment of the U.S. and State

Constitution - -." *Id.* at 5. Before he could finish, the court cut him off, indicating it already understood the basis for Mr. Mahone's objection: "Court understands the case law and has the ability to continue this motion for good cause." *Id.*

This colloquy shows both that the court understood the specific basis for Mr. Mahone's objection and that the court itself was responsible for preventing a more detailed explanation. That the court invoked its ability to continue the case upon motion for good cause, a reference to CrR 3.3(f)(2), makes it clear that Mr. Mahone's objection was "specific enough to alert the court to the type of error involved."

Greenwood, 120 Wn.2d 585, 605. Moreover, when it was the court itself that interrupted Mr. Mahone's explanation by stating it already knew what the court could do, he cannot be deemed to have waived his speedy trial right for failure to provide a more specific objection.

For these reasons, Mr. Mahone preserved his right to challenge the speedy trial violation.

Point II: The Trial Court Violated Mr. Mahone's Speedy Trial Rights When it Granted a Continuance Not Required in the Administration of Justice

Mr. Mahone was denied his speedy trial rights under CrR 3.3 when the trial court granted a twenty-five-day continuance that was not required in the administration of justice. CP 63. The State largely relies on State v. Kelley, 64 Wn. App. 755, 828 P.2d 1106 (1992) for its argument that the continuance was properly granted. State's Br. at 11-13. That case is inapposite, however, because it involved prosecutorial scheduling conflicts, a situation in which courts routinely grant continuances in the administration of justice. Kelley, 64 Wn. App. 755, 757-58 (original prosecutor had pre-scheduled vacation that did not interfere with original trial date; second prosecutor in trial on another case on new trial date); see *Appellant's Brief* (App. Br.) at 35-36. By contrast, no scheduling conflicts were noted in this case. See App. Br. at 33-36.

Indeed, in defending the continuance in this case, the State asks this Court to create new law. It asks

for an entirely new basis for granting a continuance in the administration of justice: to allow the prosecutor to prepare for trial. State's Br. at 12-13. Citing Kelley, the State suggests it would be "strange" if the speedy trial rules allowed a prosecutor to take a vacation but not prepare for trial. State's Br. at 13. But allowing continuances for pre-scheduled vacations simply accounts for scheduling conflicts, a well-established reason for administration of justice continuances. Significantly, the State fails to cite any case in which a continuance has been justified by a prosecutor's need to prepare for trial.

Finally, it is more than a little ironic for the State to justify the prosecutor's need for preparation by Mr. Mahone's pro se request to interview witnesses, State's Br. at 12-13, when the State failed to comply with that request during the first or any other trial delay. See 9/13/10 VRP 2-3; 9/29/10 VRP 3-4 (record indicates the inmate witnesses would have had to be interviewed immediately, before transfer from the jail).

For these reasons and the reasons set forth in Appellant's Brief, the continuance was not properly based on the administration of justice and Mr. Mahone respectfully requests this Court to reverse his case and dismiss his conviction.

* * * * *

Mr. Mahone relies on the arguments made in Appellant's Brief for the remainder of his arguments.

CONCLUSION

For all of these reasons and the reasons set forth in Appellant's Brief, Sylvester Mahone respectfully requests this Court to reverse his conviction and/or remand for resentencing.

Dated this 6th day of January, 2012.

Respectfully submitted,

/s/ Carol Elewski
Carol Elewski, WSBA # 33647
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that on this 6th day of January, 2012, I
caused a true and correct copy of Appellant's Reply
Brief to be served, by e-filing, on:

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/s/ Carol Elewski
Carol Elewski

ELEWSKI, CAROL ESQ

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